

REMARKS

Claims 24, 30, 69, 71 and 73 are currently amended. Consideration is urged.

Applicants were requested to elect one of 4 designated groups for the purpose of restriction. More specifically:

Group I, claims 1-3, 5-20, 27-29, 49-52, 57, 64-66, 71-75 drawn to, *inter alia*, a method for producing a non-2 μ m-family plasmid protein;

Group II, claims 4, 21-26, 38, 40-48, 53, 55, 56, 58-63 drawn to, *inter alia*, a plasmid and host cell comprising a plasmid or a host cell;

Group III, claims 30- 37 drawn to, *inter alia*, a method of producing a non-2 μ m-family plasmid protein;

Group IV, claims 69-70, drawn to, *inter alia*, a method of increasing the expression of a non-2 μ m-family plasmid protein.

Applicants also were requested to elect a species from a group of chaperones in claims 6 or 32 of the Office Action, or if Group III, the plasmid of claim 17.

Applicant respectfully traverses the restriction requirement with respect to Groups I and II, and the species selection requirement.

The above-captioned application was entered into the national stage under 35 U.S.C. 371, *i.e.* filed via the PCT. For these types of applications, the PTO follows the rules set forth in 37 C.F.R. 1.401 - 1.499.

The standard for determining whether unity of invention exists during the national stage, *i.e.* whether a restriction requirement may be imposed, is set forth in 37 C.F.R. 1.475(a) which provides:

An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.... Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Moreover, under 37 C.F.R. 1.475(b), an international or a national stage application in the national stage complies with the unity of invention requirement if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and a process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specially designed for carrying out the said process.

In the present case, the inventions designated I-II are directed to a process and an apparatus or means specifically designed for carrying out the said process. Further, the special technical feature linking Groups I and II is a 2-micron family plasmid which plasmid encodes a chaperone protein and a non-2-micron family protein.

Applicants note Martzen does not disclose any chaperone proteins. pYEX 4T-1 (the plasmid used in Martzen) does not encode a chaperone protein. Instead, page 1153 (paragraph bridging columns 2 and 3) states that GST-ORF fusion [proteins] were expressed. The only encoded proteins mentioned are: tRNA ligase, 2-phosphotransferase (page 1153, column 2, paragraph bridging columns 2 and 3), cyclic phosphodiesterase, uncharacterized protein having Appr-1"-p-processing activity, methyltransferase (page 1153, column 3, first full paragraph). Therefore, Martzen does not disclose a 2-micron family plasmid encoding both a chaperone protein and a non-2-micron family protein. Groups I and II share a special technical feature and restriction was improper.

Further, the selection of species requirement is improper. It is not a burden on the examiner to examine all species. Reconsideration is urged.

Applicant, therefore, respectfully submits that the restriction and election of species requirements are improper. Applicant respectfully requests reconsideration and withdrawal thereof.

In order to be fully responsive, Applicants hereby elect the invention of Group II, and the species PDI1. Claims 4, 21-26, 38, 40-48, 53, 55, 56, 58-63 read thereon. Applicants hereby reserve the right to file continuing applications directed to the nonelected subject matter.

The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this response or application.

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Respectfully submitted,

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